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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,331	01/24/2005	Rudiger Autschbach	REUL et al I PCT	5991
25889	7590	07/25/2007		
WILLIAM COLLARD COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576			EXAMINER WITCZAK, CATHERINE	
			ART UNIT 3767	PAPER NUMBER
			MAIL DATE 07/25/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/522,331	AUTSCHBACH ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Catherine N. Witczak	3767	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 April 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 30-117 is/are pending in the application.
- 4a) Of the above claim(s) 39-117 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 30-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/30/2007</u> .   | 6) <input type="checkbox"/> Other: _____                          |

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 30, 32, 33, and 35 - 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Berry et al (US 5,098,376).

Claims 30, 32, and 33: Berry et al disclose in Figure 2 an intravenous oxygenator having a twisted bundle of fibers inclined about 62° over a major part of their length connected to a gas supply and evacuation means (column 6, lines 37-69).

Claim 35: Berry et al disclose in column 7, line 61- column 8, line 2 the bundle of fibers having a diameter from 15 to 25 mm.

Claims 36, 37, and 38: Berry et al disclose in column 8, line 32 – column 11, line 55 the connection of the fibers being secured against untwisting themselves and having a frictional means for limiting further relative rotation.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Berry et al ('376) in further view of Berry et al ('376).

Berry et al disclose the claimed invention except for explicitly disclosing the connections being relatively rotated from 90° to 300° per 30mm fiber length. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to rotate the connections from 90° to 300° per 30mm fiber length because Applicant has not disclosed that rotating the connections from 90° to 300° per 30mm fiber length provides an advantage, is used for a particular purpose, or solves a stated problem. Therefore, it would have been an obvious matter of design choice to modify Berry et al to obtain the invention as specified in claim 31.

3. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Berry et al ('376) in view of Berry et al (US 5,125,902).

Berry et al ('376) disclose the claimed invention except for the fibers resting against an impermeable sheathing. Berry et al ('902) disclose in Figure 10 that it is known to use of sheathing to enclose a twisted bundle of fibers. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the invention as taught by Berry et al ('376) with an impermeable sheath as taught by Berry et al ('902), since such a modification would facilitate the insertion of the device into the patient (abstract).

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*Response to Arguments*

Applicant's arguments filed 4/30/2007 have been fully considered but they are not persuasive. Applicant argues that Berry et al do not disclose a plurality of bundles. Examiner points out that the Applicant has not provided any limitations in the claims which would prevent any random grouping of adjacent fibers in the system of Berry from arbitrarily being considered a first bundle, and a second, adjacent group of fibers being considered a second bundle, in which case both the fibers of the first and second bundles would be twisted in the same direction.

*Conclusion*

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine N. Witczak whose telephone number is (571) 272-7179. The examiner can normally be reached on Monday through Friday, 8-5 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

cw

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KEVIN C. SIRMONS  
SUPERVISORY PATENT EXAMINER  
